

SUPREME COURT PENDING CASES

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

STATE *v.* DANIEL B., SC 19788

Judicial District of Stamford-Norwalk

Criminal; Attempted Murder; Whether Appellate Court Properly Determined that Defendant's Conduct Constituted a Substantial Step in Course of Conduct Planned to Culminate in Murder. In 2011, the defendant asked his friend, John Evans, if he knew anybody that could murder his wife. Evans told the defendant that he would arrange a meeting with a hit man, but he instead spoke to the police about the defendant's request. The police developed a plan in which the defendant would meet with an undercover officer, Michael Paleski, who would pretend to be a hit man. During the meeting, which the police recorded on video, the defendant provided Paleski with descriptive information about his wife and agreed to pay him money for the murder. Shortly after the meeting concluded, the defendant was arrested, and he was ultimately convicted of attempt to commit murder. He appealed, claiming that there was insufficient evidence to support his conviction because the state failed to prove that his conduct constituted a substantial step in the course of conduct intended to culminate in a murder. The Appellate Court (164 Conn. App. 318) disagreed and affirmed the defendant's conviction. It first rejected the defendant's argument that, because he did not actually pay Paleski, his conduct was merely preparatory. It reasoned that pursuant to General Statutes § 53a-49, the determination of what conduct constitutes a substantial step depends on what a defendant has already done, rather than on what remains to be done. It therefore concluded that the focus of the substantial step standard must be on the defendant's conduct in agreeing to hire a hit man and providing critical information about his wife, rather than on his failure to pay the purported hit man. The Appellate Court also rejected the defendant's claim that his conduct amounted to nothing more than the crime of solicitation. It determined that it was reasonable for the jury to conclude from the evidence presented that the defendant's actions did not constitute solicitation, but rather amounted to a substantial step in a course of conduct intended to culminate in the murder of his wife. In coming to this conclusion, the Appellate Court highlighted the evidence that indicated that the defendant told Evans that he wanted his wife killed, that he agreed to hire Paleski to kill his wife, that he agreed to a price, that he provided Paleski with descriptive information about his wife, and that he suggested the method by which to commit the murder to

secure his alibi. The defendant appeals, and the Supreme Court will decide whether the Appellate Court properly construed § 53a-49 in determining that the defendant's conduct constituted a substantial step in a course of conduct planned to culminate in the murder of his wife.

STATE *v.* GEORGE MICHAEL LENIART, SC 19809/19811

Judicial District of New London

Criminal; Whether Appellate Court Properly Applied Corpus Delicti Rule in Finding Evidence Sufficient to Sustain Conviction; Whether Appellate Court Properly Determined that Trial Court Erred in Excluding Videotape Depicting Police Interview of State's Witness Before he took Polygraph Examination. The defendant was convicted of murder and capital felony in connection with the sexual assault and killing of a teenage girl. He appealed, claiming, among other things, that the evidence was insufficient to establish that the victim was dead because her body was never recovered and that, pursuant to the corpus delicti rule, his confessions to the murder could not be used to prove that the victim was dead. The corpus delicti rule prohibits the introduction of an extrajudicial confession unless the prosecution introduces some evidence independent of the confession to establish that the crime described in the confession actually occurred. The Appellate Court (166 Conn. App. 142) reversed the defendant's conviction and remanded the case for a new trial. It disagreed with the defendant's corpus delicti claim, concluding that, under Connecticut law, the corpus delicti rule is an evidentiary rule regarding the admissibility of confessions rather than a substantive rule of criminal law, which would require that the corpus delicti rule be treated as an implicit element of the state's case for which there must be sufficient evidence. Because the defendant did not object to the admissibility of his confessions at trial and did not challenge their admissibility on appeal, the Appellate Court determined that it could consider the confessions in analyzing the sufficiency of the state's evidence without reference to the corpus delicti rule. It further concluded that even if the defendant was permitted to raise the corpus delicti rule as part of his sufficiency claim, the claim was meritless because substantial evidence was admitted at trial to corroborate both the trustworthiness of his confessions and the fact of the victim's death. The Appellate Court found merit, however, in the defendant's claim that the trial court should not have excluded a videotape of an interview that the police had conducted of a witness

immediately prior to his taking a polygraph examination because the videotape revealed the witness' bias and motive for testifying for the state. The Appellate Court also found merit to the defendant's claim that the trial court improperly precluded him from presenting expert testimony concerning the reliability of jailhouse informants, finding that the testimony would not have invaded the jury's exclusive province to determine the credibility of witnesses and that the testimony was not within the common knowledge of the average juror. The Supreme Court granted both the state and the defendant certification to appeal from the Appellate Court. In the state's appeal, the Supreme Court will consider whether the Appellate Court properly concluded that the trial court erred in excluding the videotape of the witness' pre-polygraph interview, and whether it properly concluded that the trial court erred in excluding expert testimony regarding jailhouse informant testimony. In the defendant's appeal, the Supreme Court will determine whether the Appellate Court properly applied the corpus delicti rule in concluding that there was sufficient evidence to sustain the defendant's conviction.

CARVAUGHN JOHNSON *v.* COMMISSIONER OF
CORRECTION, SC 19856
Judicial District of Tolland

Habeas; Ineffective Assistance of Counsel; Whether Appellate Court Properly Found that Counsel's Failure to Present Alibi Defense not Deficient Performance; Whether Appellate Court Properly Found that Counsel's Failure to Present Third Party Culpability Defense did not Prejudice Petitioner. The petitioner was convicted of murder, and he brought this habeas action claiming that his trial counsel rendered ineffective assistance in failing to present at trial an alibi defense and a defense of third party culpability. The habeas court agreed, and it vacated the defendant's conviction and remanded the case to the trial court for further proceedings. The respondent appealed, and the Appellate Court (166 Conn. App. 95) reversed and remanded the case to the habeas court with direction to deny the petitioner's ineffective assistance of counsel claim. The Appellate Court ruled that the habeas court erroneously concluded that the petitioner was deprived of his right to the effective assistance of counsel as a result of his trial attorney's failure to present testimony in support of a third party culpability defense where the petitioner failed to show any prejudice from his attorney's failure to present the evidence or to demonstrate that there was a reasonable probability that, but for the failure to present the evidence, the result of the trial

would have been different. The Appellate Court also ruled that the petitioner failed to demonstrate that his attorney's strategic decision to focus the jury's attention on weaknesses in the state's case rather than presenting testimony in support of an alibi defense was not objectively reasonable under the circumstances. In finding that the attorney's representation as to the alibi defense was reasonably competent, the Appellate Court refused to consider the petitioner's claim that the attorney failed to adequately investigate the strength of an alibi defense, noting that the petitioner had not raised that claim in his habeas petition. The Supreme Court granted the petitioner certification to appeal, and it will decide whether the Appellate Court properly (1) found that counsel was not ineffective in failing to present an alibi defense, (2) declined to review the petitioner's claim regarding counsel's failure to adequately investigate the alibi evidence and (3) found that the petitioner was not prejudiced by counsel's failure to present a third party culpability defense.

BRENDA SNELL *v.* NORWALK YELLOW CAB, INC., et al., SC 19929
Judicial District of Stamford-Norwalk

Negligence; Whether Doctrine of Superseding Cause Applies Where Conduct of Third Party is Criminally Reckless. A cab driver drove a taxicab to an apartment complex in Norwalk where he parked the taxicab and went inside one of the apartments, leaving the vehicle unlocked and with the keys in the ignition. Two teenagers stole the taxicab and drove it to Stamford, where they struck the plaintiff while she was walking on a sidewalk. The plaintiff brought this action against the cab driver and his company, claiming that her injuries were caused by the cab driver's negligence in leaving the taxicab unattended in a high crime area with the keys in the ignition. The trial court instructed the jury on the doctrine of superseding cause, stating that if the jury found that the theft of the taxicab and the resulting accident were intentional acts that were outside the scope of the risk created by the cab driver's conduct, the defendants could not be found responsible for the plaintiff's injuries. The jury returned a verdict in favor of the defendants, finding that although the cab driver was negligent, the accident was outside the scope of the risk that was created by his negligence. The plaintiff appealed, claiming that the doctrine of superseding cause was not applicable here because the teenagers were merely criminally negligent and did not act with the specific intent to harm her. The Appellate Court (172 Conn. App. 38) disagreed, finding that although the Supreme Court in *Barry v. Quality Steel Products*,

Inc., 263 Conn. 424 (2003), abolished the use of the superseding cause doctrine in cases in which the conduct of the intervening action was merely negligent, it did not hold that the continued validity of the doctrine is limited to cases in which the intervening actions of a third party were intended to cause harm. It emphasized that, under *Barry*, a defendant may continue to raise the doctrine of superseding cause where the defendant claims that an unforeseeable “criminal event” supersedes its tortious conduct. Accordingly, it held that it was entirely appropriate for the trial court to submit the doctrine to the jury because it was clearly implicated by the defendants’ allegation that the “criminal event” that followed the initial theft fell so far afield of the hazard created by the cab driver’s negligence as to negate his liability. The Appellate Court also rejected the plaintiff’s claim that the trial court improperly denied her motion to set aside the verdict because the verdict was irreconcilable with the jury’s interrogatory responses. It reasoned that the jury’s findings that the plaintiff’s injuries were outside the scope of the risk created by the cab driver’s conduct and that the cab driver had proximately caused the plaintiff’s injuries were consistent with a verdict for the defendants because the jury could have construed the intervening criminal acts of the teenagers, which occurred further down the causal chain, as having superseded any liability attributable to the defendants. The plaintiff appeals, and the Supreme Court will determine whether the doctrine of superseding cause applies in cases in which the conduct of the third party is criminally reckless and whether the trial court abused its discretion in denying the plaintiff’s motion to set aside the verdict.

JANET BRENNAN, EXECUTRIX (ESTATE OF THOMAS BRENNAN)
et al. v. CITY OF WATERBURY, SC 19937
Compensation Review Board

Workers’ Compensation; Whether Heart and Hypertension Benefits Under § 7-433c may Pass to Deceased Employee’s Estate. Thomas Brennan suffered a heart attack while employed as the fire chief for the city of Waterbury. The city was ordered to pay him benefits under the Heart and Hypertension Act, General Statutes § 7-433c. The statute provides that if a uniformed member of a paid municipal police or fire department who successfully completed a physical examination prior to employment becomes disabled or dies as a result of heart disease or hypertension, on or off duty, “he or his dependents, as the case may be,” shall receive compensation from the municipal employer in accordance with the procedures of the Workers’ Compensation Act as if the employee were injured in the course of

employment. The parties attempted unsuccessfully to negotiate a full settlement. In the meantime, the city made two partial payments towards Brennan's permanent partial disability award. Brennan then died, and his estate was substituted as claimant. After formal hearings, the trial commissioner found that Brennan was entitled to permanent partial disability benefits for an 80 percent disability of the heart and that the unpaid portion of the award should be paid to his estate. The city appealed to the Compensation Review Board, claiming that an estate is not a legally qualified recipient of funds awarded pursuant to § 7-433c. The city relied on *Morgan v. East Haven*, 208 Conn. 576 (1988), which held that the clear and unambiguous language of § 7-433c requires a municipal employer to provide compensation only to the dependents of a deceased employee. In *Morgan*, the Supreme Court also found that because the preamble to § 7-433c provided that the statute was designed to protect against "economic loss" from disability, benefits awarded under the statute are akin to special benefits under the Workers' Compensation Act, which compensate for the loss of the ability to work and do not pass to the deceased employee's estate. The board agreed with the city and reversed the trial commissioner's ruling. The estate appeals, claiming that *Morgan* is no longer good law because subsequent legislative revisions to § 7-433c removed the "economic loss" language relied upon by the Supreme Court. The estate further argues that § 7-433c benefits are more akin to specific benefits under the Workers' Compensation Act, which compensate for the loss or loss of use of a body part and pass to the deceased employee's estate, and that *Morgan* should be overruled to the extent that it requires that benefits awarded under § 7-433c be treated differently from similar benefits under the Worker's Compensation Act.

DAVID PETRINI *v.* MARCUS DAIRY, INC., SC 19973

Compensation Review Board

Workers' Compensation; Whether Workers' Compensation Commission Properly Deemed Employer Responsible for Cost of Injured Worker's Medical Marijuana. In 2008, the plaintiff sustained a back injury at work that rendered him totally disabled, and his employer, defendant Marcus Dairy, Inc., has continued to pay him temporary total disability benefits. After taking various opiate pain medications for over six years and disliking their effects, the plaintiff went to a physician authorized to certify patients into the Connecticut Medical Marijuana Program and received a certificate allowing him to purchase two and a half ounces of marijuana per month at a cost of

\$1488.90. The plaintiff submitted receipts for reimbursement through his workers' compensation coverage, and the workers' compensation commissioner ordered the defendant to pay the plaintiff's medical marijuana expenses. The commissioner found that the plaintiff's use of marijuana had afforded him greater energy and mobility and that it had significantly increased his function, and the commissioner ruled that his marijuana use was remedial in nature and constituted reasonable or necessary medical treatment such that the defendant was responsible for the cost of the marijuana pursuant to § 31-294d (a) (1) of the Workers' Compensation Act. The defendant appealed the decision to the Compensation Review Board, which affirmed the commissioner's decision. This is the defendant's appeal from the Compensation Review Board. The defendant claims on appeal that the workers' compensation commission erred in concluding that the plaintiff's marijuana use qualified as compensable "reasonable or necessary" medical treatment where the defendant argues that the plaintiff's marijuana use was merely palliative in that it did not repair the damage from his workplace injury or enable him to return to work. The defendant also argues that the plaintiff was not properly certified into the state medical marijuana program because the plaintiff did not have a "bona fide physician-patient relationship" with the doctor who certified the plaintiff as contemplated by state Department of Consumer Protection regulations. Next, the defendant contends that the workers' compensation commission wrongly authorized the use of medical marijuana for the treatment of a workplace injury where the defendant claims that marijuana is illegal under federal law and that it has not been approved by the Food and Drug Administration for medical treatment. Finally, the defendant urges that General Statutes § 21a-408o, which exempts health insurers from coverage for the palliative use of medical marijuana, must be read to also exempt workers' compensation insurance carriers from coverage.

DANIEL JACOB D'ATTILO, PPA, et al. v. CONNECTICUT STATEWIDE
GRIEVANCE COMMITTEE et al., SC 20059
Judicial District of Hartford

Attorney Grievances; Whether Plaintiffs Have Standing to Challenge Dismissal of Grievance Complaints Brought Against Their Former Attorneys; Whether Trial Court Should Have Intervened in Attorney Grievance Process. The plaintiffs filed grievance complaints against their former attorneys, alleging that the attorneys conspired to deprive them of millions of dollars from a \$25 million medical malpractice settlement. A grievance panel dismissed the complaints, finding no probable cause that the attorneys were guilty of misconduct. The plaintiffs then brought this action against

the Statewide Grievance Committee and other officials involved in the attorney grievance process, seeking an order of mandamus and injunctive relief in connection with the dismissal of their complaints against their former attorneys. The plaintiffs alleged that the defendants disregarded statutory mandates, abused their discretion and acted arbitrarily and disparately in the handling of their grievance complaints. The trial court granted the defendants' motion to dismiss the action on finding that the plaintiffs lacked standing to bring it, concluding that the plaintiffs were not statutorily aggrieved because there is no statutory or practice book provision that expressly or impliedly grants a complainant a private right of action to challenge the outcome of the attorney grievance process. The trial court also determined that the plaintiffs were not classically aggrieved because they could not demonstrate a colorable claim of an injury to a cognizable specific, personal and legal interest in the discipline of their former attorneys. It rejected the plaintiffs' claim that they had a legally protected interest in the discipline of the attorneys because, had their grievance complaints been accorded proper review, they would have been deemed entitled to an award of monetary restitution. The court found that the potential for restitution was conjectural and that it was impossible to know whether, had the plaintiffs' complaints been forwarded to the Statewide Grievance Committee, the Grievance Committee would have disciplined the attorneys or deemed sanctions appropriate. Finally, the court rejected the plaintiffs' request that it exercise its inherent powers to intervene in the investigation and control of the attorney discipline process, finding that the plaintiffs' allegations of misconduct did not rise to the level of egregious and otherwise irreparable violations of constitutional guarantees that would justify the court interfering with the established disciplinary process. The plaintiffs appeal, and the Supreme Court will determine whether the trial court properly dismissed their action for lack of aggrievement and whether it properly declined to intervene in the grievance process pursuant to its inherent authority.

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.

John DeMeo
Chief Staff Attorney
